IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.119 OF 2004

M/s.G.K.Builders. ... Petitioner.

vs.

M/s.Global Infrastructure and technologies Ltd. and another. .... Respondents.

Mr.Ravi Kadam i/b. Ranjit & Co., for Petitioner.

Mr.Arif Bookwala i/b. Saira Mirzankar, for Respondent no.1.

Mr.D.D.Madan i/b. B.Chandra, for Respondent no.2.

CORAM: D.K.DESHMUKH,J.

DATED: 4th August,2005

P.C.:-

1. By this petition, the petitioner challenges the Award made by the Sole Arbitrator dated 17th July,2003 directing the petitioner to pay the amount of Rs.3,00,00,000/- (Rupees Three Crores only) with interest to the respondents. According to the Award, the petitioner did not file any reply on merits to the claim made in the statement of claim. The position that there is no reply on merits filed before 17.7.2003, is not disputed. What is claimed by the

petitioner is that the reply was sent after 17.7.2003 and that the Award was not made on 17.7.2003. According to the petitioner, an inference is to be drawn that the Award was not actually made on 17.7.2003 because in other four matters which were connected to this matter, the Award was made in October,2003. In my opinion, merely from the facts that in connected matters the Award was made in October,2003, an inference cannot be drawn that the Award made in the present matter is anti-dated. The fact thus remains that there is no reply filed. It appears that an objection was raised before the learned Arbitrator by letter dated 16.7.2002 that he cannot be the Arbitrator because he is the witness to the agreement between the parties and that the said agreement is sham and bogus. Both the objections were decided by the learned Arbitrator by order dated 16.7.2002. So far as the first objection is concerned, he observed that he has been named as arbitrator in the agreement by both the parties. When both the parties knowing that he has signed as witness on the agreement appointing him as arbitrator an objection on the ground that he has signed the agreement as a witness cannot be raised. I do not find any fault with the reason given by the learned Arbitrator. So far as the objection that the agreement is sham and bogus, is concerned, the learned Arbitrator has observed in the Award dated 17.7.2003 that the burden to prove the allegation is entirely on the petitioner by leading evidence. I also do not see any error in this reason given for rejecting the objection. Admittedly, the petitioner did not appear before the learned Arbitrator for defending the case on merit.

2. It was contended before me that on 23.7.2001, the cheques were given alongwith the letter and in that letter it was stated that the cheques are to be deposited after IOD/CC is issued. On 23.7.2001, according to the petitioner the parties had entered into a letter of confirmation wherein it is stated that money is payable after the order under Section 47 of the M.R.T.P. Act is secured. It was urged before me that those two documents were relevant and they were suppressed by the respondents from the Arbitrator. However, perusal of the petition shows that in the petition no ground is raised that before the Arbitrator the aforesaid two documents were not produced and were suppressed by the Respondents. What is pertinent to note is that even copy of the statement of claim submitted by the Respondents is not annexed to the petition. Though it was argued before me relying on the letter dated 24.7.2003 from the petitioner to the learned Arbitrator that the matter was not even closed for Award on 24.7.2003, there are no averments to be found in the petition about this and even copy of the letter to which this letter is sent, as reply is not annexed. It is clear that the petitioner did not care to appear before the named arbitrator to defend the case, the present petition has been filed without proper pleadings and documents. I have not been shown anything which can show that the Award made by the learned Arbitrator is liable to be disturbed in the limited jurisdiction of this Court under Section 34 of the Arbitration and Conciliation Act,1996. The petition therefore, fails and is dismissed. The petitioner is directed to pay cost of this petition to the respondents as incurred by the respondents.

At this stage a request is made that execution of the Award be stayed for a period of four weeks. The award is for payment of money. Stay of execution of money decree cannot be granted specially after finding that the petition has no substance, and that the award is valid. Hence, the request is rejected. Certified Copy be expedited.